

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Scott LaDell Vance)	
)	
Application No.: 10/709,345)	Group Art Unit: 2618
)	
Filed: April 29, 2004)	Examiner: Wen Wu Huang
)	
Title: DEVICE AND METHOD FOR)	
HANDS-FREE PUSH-TO-TALK)	
FUNCTIONALITY)	

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF

STATUS OF CLAIMS

Claims 1, 4-5, 9-14, 22, 26-31, 33, 35-37 and 41-45 are pending. Claims 2-3, 6-8, 15-21, 23-25, 32, 34, 38-40 and 46-48 have been cancelled. Claims 1, 4-5, 9-14, 22, 26-31, 33, 35-37 and 41-45 stand rejected by the July 25, 2008 final rejection. The July 25, 2008 final rejection of claims 1, 4-5, 9-14, 22, 26-31, 33, 35-37 and 41-45 is being appealed herein.

GROUND'S OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1, 12-14, 9-14, 22, 26, 31, 33, 36, 37 and 41 are unpatentable under 35 USC § 103(a) as unpatentable over U.S. Patent No. 3,586,798 to Holmes (hereinafter "Holmes") in view of U.S. Patent Application Publication Number 2004/0243416 to Gardos (hereinafter "Gardos");
2. Whether claims 4, 5, 27 and 42 are unpatentable under 35 USC § 103(a) as unpatentable over Holmes in view of Gardos and in further view of U.S. Patent No. 5,101,504 to Lenz (hereinafter "Lenz"); and
3. Whether claims 9-11, 28-30, 35 and 43-45 are unpatentable under 35 U.S.C. §103(a) over Holmes in view of Gardos, further in view of Lenz, yet further in view of U.S.

Patent No. 4,426,733 to Brenig (hereinafter “Brenig”), and still yet further in view of U.S. Patent No. 6,594,632 to White (hereinafter “White”)

ARGUMENTS

This Reply Brief is filed under the provisions of 37 CFR 41.41. Appellant is cognizant that this Reply Brief is to be directed to such new points of argument that are raised in the Examiner’s Answer. The following points of argument have been either newly presented in the Examiner’s Answer or presented in a different light by the Examiner and earlier in the record.

In an Interview Summary attached to and referred to in the Reply Brief, it is stated that the Examiner and Appellant reached an agreement that claims 37 and 41-45 were withdrawn from consideration of this appeal. However, Appellant made no such agreement.

During the interview, Appellant acknowledges that claims 37 and 41-45 were discussed and the Examiner indicated that these claims should have been rejected under section 101 during prosecution, even though the Examiner never made such rejection. Yet, the Examiner only presented the following two options: (1) for Appellant to amend the claims by reopening prosecution; or (2) proceed with the appeal. After consideration, Appellant informed the Examiner that Appellant wishes to proceed with the appeal without reopening prosecution. However, Appellant did not agree to withdrawal claims 37 and 41-45 from the appeal. As such, Appellant submits that claims 37 and 41-45 should not be withdrawn from the appeal by the Examiner.

Further, the Examiner did not present a section 101 rejection for claims 37 and 41-45 in the Reply Brief. Accordingly, claims 37 and 41-45 currently do not stand rejected under section 101 and thus, are still pending in this appeal. Appellant requests such claims to be considered by the Board.

Conclusion

For at least the above reasons, it is respectfully submitted that withdrawal of claims 37 and 41-45 in this appeal is improper. Additionally, it is respectfully submitted that the rejection of claims 1, 4-5, 9-14, 22, 26-31, 33, 35-37 and 41-45 are improper for the reasons stated in

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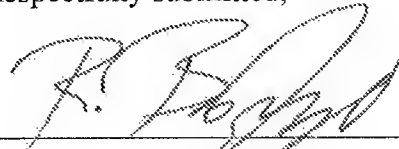
Appellant's Appeal Brief. Accordingly, reversal of the rejections of claims 1, 4-5, 9-14, 22, 26-31, 33, 35-37 and 41-45 is respectfully requested.

Date:

6/4/09

Respectfully submitted,

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